

## Exhibit 3

Exhibits: 1 - 11 Volume 1, Pages 1 - 81

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
Civil Action No. 04-10233-RCL

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JONATHAN BEIJAR

Plaintiff

vs.

STANLEY FASTENING SYSTEMS, L.P.

Defendant  
-----

VIDEOTAPED DEPOSITION OF IGOR PAUL  
Tuesday, September 6, 2005, 10:35 a.m.

Smith & Duggan LLP  
Lincoln North  
55 Old Bedford Road  
Lincoln, Massachusetts

----- Reporter: David A. Arsenault, RPR -----  
darsenault@fabreporters.com www.fabreporters.com

Farmer Arsenault Brock LLC  
50 Congress Street, Suite 415  
Boston, Massachusetts 02109  
617.728.4404 fax 617.728.4403

1           A. Legal-related consulting, I don't think  
2 I've ever earned more than a hundred thousand. It  
3 was always lower.

4           Q. Doctor, tell me all of your experience in  
5 designing pneumatic nailers.

6           A. I don't think I have designed a pneumatic  
7 nailer from scratch. In terms of designing  
8 pneumatic tools and pneumatic impact tools, I  
9 consulted for Ingersoll-Rand over a period of about  
10 four or five years developing impact kinds of tools,  
11 which were actually jackhammers, to reduce the  
12 recoil of jackhammers and actually put in a dynamic  
13 vibration and impact negator, which is essentially a  
14 mass which moves in the opposite direction to the  
15 piston, to the driving piston, so that the recoil of  
16 the driving piston is minimized. So that dealt with  
17 pneumatic impact tools.

18                   Actually, that extended also to  
19 hand-held chisels, pneumatic chisels for  
20 Ingersoll-Rand. At some point, I think it was in  
21 the late '70s or early '80s, I worked for Hitachi,  
22 again as a consultant. And that started when I was  
23 hired by them in a legal matter. And that  
24 essentially became a nonlegal consulting matter,

1 because they were having some problems with their  
2 trigger mechanism, particularly their sequential  
3 trigger mechanism. So I essentially solved their  
4 problem with respect to that.

5 I think that's really the only hands-on  
6 design experience that I have in terms of pneumatic  
7 nailers or pneumatic drive-type tools. I've  
8 consulted on various other pneumatic tools, but one  
9 that essentially has a hammer blow or piston  
10 pneumatic drive with the associated controls, that's  
11 been limited to that.

12 I've had about a dozen cases over the  
13 years which were on the legal side, essentially, as  
14 a consultant involving accidents with pneumatic  
15 nailers; and also some, in addition to that,  
16 involving electric staplers and nailers.

17 Q. But you never designed ground up a  
18 pneumatic nailer. Is that true?

19 A. Certainly not.

20 Q. Have you ever worked as an employee of  
21 pneumatic nailers?

22 A. No, other than as a consultant.

23 Q. But I said as an employee.

24 A. No.

1 Q. Have you ever worked with pneumatic nailers  
2 building homes, woodworking or anything like that?

3 A. Yes, only on my two homes that I have  
4 helped build.

5 Q. Which homes were they?

6 A. Well, one was in Andover, Massachusetts. I  
7 forget the address, as I sit here. The one is the  
8 one I live in now, five years ago.

9 Q. You actually did some of the construction  
10 yourself?

11 A. Yes, quite a bit.

12 Q. What kind of pneumatic tools, pneumatic  
13 nailers did you use?

14 A. Actually, the contractor had Hitachi tools.  
15 I think he may have also had a Stanley tool. But at  
16 the time I wasn't paying attention.

17 Q. Okay.

18 A. So, I'm not sure.

19 Q. Who is the contractor up in New Hampshire,  
20 do you know?

21 A. Yes. That's horrible, because I still talk  
22 to him. I'll have to get it to you.

23 Q. Would you do that?

24 A. Yes.

1 Q. In other words, it can't fire without the  
2 trigger being depressed.

3 A. That was my conclusion.

4 So then in either scenario, whether he  
5 pulled it or didn't pull it, it couldn't fire  
6 without the trigger being depressed. So at that  
7 stage, I have to say -- you know, he was the closest  
8 to the gun when it hit him. So he has a description  
9 of how it happened.

10 There is another description by, you  
11 know, two other people, three other people, although  
12 only one of them was deposed, that indicate that he  
13 pulled it with his left hand and caught it with his  
14 right hand. So then I did have to get into some  
15 reconstruction, A, to see, you know, whether either  
16 scenario would allow the trigger to be depressed  
17 accidentally while he is either catching or being  
18 hit by the gun. So I essentially looked at the two  
19 scenarios.

20 Q. Okay. When you say two scenarios, are you  
21 talking about one scenario being the three  
22 eyewitnesses and the other being that of Mr. Beijar?

23 A. The tool hitting him where it hit him,  
24 according to the x-rays -- the x-rays are really the

1 only, you know, physical evidence that's here. So  
2 beyond that, I have to look at physical principles  
3 and how the scenario could have developed.

4 Q. But when you said two scenarios --

5 A. Yes.

6 Q. -- the two scenarios you are talking about  
7 are, one is Mr. Beijar's scenario, and the other  
8 scenario is the scenario given by the three  
9 eyewitnesses. Is that what you meant by the two  
10 scenarios?

11 A. Well, as a starting point, yes.

12 Q. Okay.

13 A. The starting point being that one is that  
14 he doesn't consciously pull on anything. Somebody  
15 yells watch out, or he turns around and he sees this  
16 thing coming towards him.

17 Q. That's Mr. Beijar's scenario?

18 A. That's Mr. Beijar's scenario.

19 Q. The three other eyewitnesses have a  
20 different view?

21 A. Well, they all seem to have exactly the  
22 same view, that he pulls the hose with his left  
23 hand.

24 Q. To get the tool --

1 as to how this accident happened?

2 A. No, not that I know of.

3 Q. Did you come to an opinion as to how the  
4 accident happened as part of trying to reconstruct  
5 this accident?

6 A. I have come to an opinion as to my opinion  
7 how the accident most likely happened.

8 Q. I'm going to ask you to give that opinion.  
9 I know that you mentioned that you wanted a break  
10 after an hour. I think this is probably a good  
11 time.

12 A. I can keep going.

13 Q. Okay. Great. Can you illustrate for me,  
14 can you show me by using the tool -- and I brought a  
15 hose here for you to use -- how you think this  
16 accident happened.

17 A. Well, I think this accident happened  
18 differently from either what Mr. Beijar says or what  
19 the two eyewitnesses say. The reasons for that are  
20 essentially the laws of physics and where the nail  
21 entered his chest.

22 Q. Can you show me how you think the accident  
23 happened?

24 A. Okay, sure. Essentially the tool --



1 eyewitnesses' description is that he pulls the gun,  
2 pulls it by the hose -- incidentally, this staging  
3 is about ceiling height here. He can't quite reach  
4 the gun. So according to the two -- to the one  
5 eyewitness who was actually examined on it under  
6 oath, he pulls it down with his left hand and pulls  
7 it toward him and catches it like a football, he  
8 says. He says that he sees him catch it like that  
9 (indicating), as it is coming down, and he hits the  
10 trigger with his thumb and then pulls the thing in.  
11 He had to actually pull it down like that  
12 (indicating) and that's when it fired. I don't  
13 think that's consistent with physical principles.

14 Q. Is there any witness who testifies whether  
15 the trigger was depressed before or after the tip of  
16 the tool hit him on the chest?

17 A. Well, I think actually both Mr. Pinard and  
18 Mr. Edwards, who -- I think it was Wayne Edwards --  
19 who says based on what he had heard -- he was  
20 reconstructing it, and he says that probably the  
21 trigger was depressed before -- it had to be  
22 depressed before it hit his chest.

23 Q. Could you show me where in Mr. Pinard's  
24 deposition he says that?

1           A. It still could not swing towards him.

2           Q. Right. But if he pulled it down with his  
3 left hand and pulled it in with his right, that  
4 would be another way the tool could get to his  
5 chest; is that true?

6           A. Except, it is against physical principles.  
7 If he pulled on the hose, then the gun would come  
8 off the scaffolding not in the position that hit his  
9 chest.

10          Q. Unless he pulled it into him.

11          A. Even if he pulled it into him. Because if  
12 it is lying in any orientation on the plank and you  
13 pull on the hose, the hose is going to be what's  
14 towards you, not the tip of the gun. So if you pull  
15 it down, there's no other way the gun can come off  
16 the plank except hose first, because you are pulling  
17 on the hose. So if it comes at you this way, if he  
18 catches it this way, then he would have to turn it  
19 around and bring it in like this. I just don't  
20 think that can happen. Eyewitness or not, I mean,  
21 he's 20 feet away facing the guy's back.  
22 Physically, it cannot happen that way.

23          Q. Let me ask you a question, Doctor. Do you  
24 think that it is a reasonable thing to do to pull

1     leaned the plank against what he thought was the  
2     house -- I think he actually leaned it against the  
3     house and the plank or just the plank -- and as per  
4     the eyewitnesses, the gun was teetering on the  
5     edge of the plank. And that's according to  
6     Mr. Pinard, why he told him to put the tool back and  
7     said that he couldn't reach it. But that's not the  
8     plaintiff's recollection.

9             The plaintiff's recollection is that he  
10    turns around and the tool is coming towards him.  
11    Now, I think that may very well have happened if his  
12    foot got entangled with the hose. But it wouldn't  
13    have pulled the tool down.

14            Q. What hose?

15            A. This hose, the air hose. If you look in  
16    the pictures the next day, they have a tool lying up  
17    there. It is to the right of the bracket. Now, I  
18    don't know if they were trying to put the tool, you  
19    know, in some position there like it was at the time  
20    of the accident. But it is certainly consistent  
21    with all the exhibits that they mark at their  
22    deposition, that the tool was at the end of the  
23    plank. So it was probably beyond the bracket.

24            And you see, you know, the hose coming

1 down and Mr. Pinard said the hose was in front of  
2 the plank. So if that tool falls off the plank, it  
3 is going to go down like this, gravity will just  
4 pull it straight down. But because of the hose up  
5 there, it starts swinging towards him.

6 Now, where it hits his chest -- or where  
7 he was pulling it as a football, the gun has already  
8 fallen about 4 feet, it had fallen at least 4 feet.  
9 So it had quite some energy. Now, even if he  
10 reached up, according to Mr. Pinard, and caught the  
11 gun up there, which was still about 1 1/2 feet after  
12 it dropped from the plank, and then brought it down  
13 and pulled it in, he already had his finger on the  
14 trigger.

15 So either scenario, I don't think that  
16 Mr. Pinard's scenario could have happened based on  
17 physical evidence and physical principles. He could  
18 have pulled it down, but then that's not how the gun  
19 swung into his chest. He could have tried pulling  
20 on it and the thing fell off and swung into him. He  
21 could have just touched the, a hose while he was  
22 going by. The thing was partially off the plank.  
23 Or the plank could have started its drop.

24 Now, for any object to drop about 4 feet

1 -- okay? -- that chart is in there too, it takes  
2 close to a second. So the time sequence was  
3 certainly there, that the plaintiff turns around,  
4 sees the thing coming towards him. Although he sees  
5 it wrong as well. It couldn't have come at him this  
6 way, the way the witnesses -- or one witness says.

7 Q. The way Mr. --

8 A. Mr. Picard (sic). It couldn't have come  
9 this way if he pulled on the hose.

10 Q. I'm getting lost here. Let me try again.

11 A. Yeah.

12 Q. My first question was, in your  
13 reconstruction, do you have a view whether or not  
14 Mr. Beijar pulled on the hose?

15 A. I don't think he purposely pulled on the  
16 hose near the plank. He may have stepped on the  
17 hose on the ground and disturbed the hose.

18 Q. Is there any evidence from Mr. Beijar,  
19 Mr. Pinard, from any of the witnesses, Mr. Cordeiro,  
20 Mr. Santos, that Mr. Beijar stepped on the hose,  
21 anywhere?

22 A. No.

23 Q. Is there any evidence that he pulled on the  
24 hose?

1 in front of you, Mr. Beijar's tool.

2 A. Yes.

3 Q. Could you please list for me all the ways  
4 in which you think this tool is not properly  
5 designed that had anything to do with this accident.

6 A. Well, in my professional opinion, this  
7 tool, which is a contact trip tool, should have a  
8 dual-action trigger to make up for the fact that a  
9 contact trip mechanism essentially removes the  
10 second safety aspect of the trigger. And in this  
11 particular case, it would have prevented the  
12 accident.

13 In terms of disconnecting the hose when  
14 not in use, I think that is an instruction which is  
15 not practical in the field and which is not done in  
16 the field. And even Mr. Pinard essentially says  
17 that he connected it in the morning because we are  
18 going to need it later on. So you have the tool  
19 ready for use. And it frequently lies around with  
20 power on. So I don't think that just an instruction  
21 or warning to remove the hose is adequate.

22 If, indeed, Stanley or Bostitch want it  
23 as a safety issue, then they could very easily  
24 provide an automatic power shutoff when the

1   pneumatic is connected. So that if you don't use  
2   the tool for whatever period of time they would  
3   think is reasonable, the pneumatics would be  
4   disconnected from the driving hammer. And to  
5   restart it, all you would have to do is to depress a  
6   push-button or you could have a handle so that when  
7   you grasp the tool you automatically activate the  
8   power.

9                   So I think those are essentially the two  
10   defects. In my report I mention a number of ways in  
11   which a contact trip actuating mechanism can be made  
12   into essentially a sequential trip device. Even in  
13   the manual itself, Bostitch and the industry in  
14   general agrees that the sequential type of actuation  
15   of pneumatic tools is safer than the contact trip.  
16   The only reason that the contact trip is really done  
17   is to be able to bump fire during a roofing  
18   application, which is fine. I think it is a great  
19   feature that you can just grab the trigger and bump  
20   fire a number of nails in a row without stopping.

21                   And a sequential operation doesn't allow  
22   that to happen. You would have to let go of the  
23   trigger every time, apply it, and so on. But by its  
24   very nature the contact trip takes away that second

1 independent function of the hand. And on at least  
2 five construction sites I have seen these tools tied  
3 down. That's why presses in industry have an anti-  
4 tiedown feature, so that you cannot tie down a  
5 safety function. In the contact trip design, it is  
6 very easy to defeat this function, and it gives the  
7 tool a much bigger utility, but it completely  
8 bypasses the safety function.

9           So for contact trip tools, in my  
10 professional opinion, you should have the dual-  
11 function trigger, which makes you do two things  
12 before the trigger can actually be depressed. You  
13 can still after you do that, do your bump nailing.  
14 All it does is it puts the sequential -- and it has  
15 to be a conscious, two-step function to start the  
16 trigger. Either for a series of contact, of impact  
17 trip nailings or a single nail. And it does not  
18 take away from either the utility or function or  
19 quickness of how you do it. All it does is  
20 essentially doubles the safety.

21       Q. Have you now given me a list of all of your  
22 problems with the tool as far as it applies to this  
23 case?

24       A. I think so.



1           A. Well, also most trigger-operated tools have  
2   a guard over the trigger so that you can't, or it is  
3   very difficult to activate the trigger accidentally.  
4   You have to actually insert your finger into a  
5   limited space.

6           Q. Okay.

7           A. So instead of being able to hit against  
8   this, either with the thumb or your elbow, it would  
9   have a trigger guard so that you would be hitting  
10   the trigger guard. Now, you still could insert your  
11   thumb this way and push it down, but it is  
12   essentially a trigger guard against accidental  
13   actuation of the trigger. You have them on  
14   handguns. You have them on rifles. You have them  
15   on handtools. But, of course, a dual-action trigger  
16   is even better.

17          Q. Is it your testimony, Doctor, that if this  
18   tool had a trigger guard, as you've just described,  
19   that it would be reasonably safe for its intended  
20   uses?

21          A. In my opinion, no. I think it still would  
22   have to have the dual-action trigger. But in this  
23   accident, in my opinion, the trigger guard would  
24   have prevented it.

**Igor L. Paul, Sc.D., P.E.**  
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August 8, 2005

Mr. Scott W. Lang  
Lang, Xifaras & Bullard  
115 Orchard Street  
New Bedford, MA 02740

Re: Beijar v.  
Stanley Fastening Systems

Consulting fees in conjunction with above case since last billing on 3/24/05:

4/5-4/10/05	Review of Stipulation etc. delivered with tool on 4/4/05; inspection and photos of subject nailer; rental of exemplar nailer and air compressor, insp., photo and testing of exemplar nailer; testing and comparison of subject nailer; comparison with Ponko test report; request for additional test protocols, review of additional depositions	2.5 hrs
Thru 8/8/05	Review of materials received June 18/05 including protective order, Stanley specifications and SOP's ; sign protective order; phone conf's with Mr. Lang; final professional opinions and report; copy photos onto CD	1.5 hrs

**Consulting fees since last billing on 3/24/05:**

4 hrs active work on file @ \$ 300/hr	\$ 1,200
Expenses: Tool Rental (\$ 144)	\$ 144
<b>TOTAL WORK SINCE 3/24/05</b>	<b>\$ 1,344</b>
<b>LESS CREDIT FROM 3/24/05 Bill</b>	<b>\$ - 600</b>
<b>TOTAL DUE</b>	<b>\$ 744</b>

Igor Paul  
Soc. Sec. Nu.: 078-28-1241

## **Biographical Sketch**

**Igor L. Paul, Sc.D., P.E.**  
**Professor of Mechanical Engineering (Retired)**  
**Massachusetts Institute of Technology**  
**Cambridge, Massachusetts 02139**

**Personal** Born 1936, married, three grown children

**Languages** Fluent in Russian and German

**Education** B.S. in Mechanical Engineering, MIT, 1960  
M.S. in Mechanical Engineering, MIT, 1961  
Sc.D in Mechanical Engineering, MIT, 1964  
Shell Foundation Fellow; Ford Foundation Post-Doctoral Fellow

### **Employment History**

Mechanical Engineering Department Faculty, MIT; 1964 to June 30, 2003

### **Professional Memberships**

Registered Professional Engineer (Mass.); ASME; ASEE; SAE; NSPE;  
Biomedical Engineering Society; Orthopedic Research Society; N.Y.  
Academy of Sciences; American Society of Biomechanics; PI TAU  
SIGMA, SIGMA XI -Treasurer (Honorary Societies)

### **Teaching**

Design and Manufacturing I and II; Product Engineering Process; Mechanical Design ; Mechanics & Materials ; System Modeling, Control and Dynamics; Measurement and Instrumentation; Biomechanics; Quantitative Physiology (Musculo-Skeletal Systems & Human Factors in Design); Real World Ethics (Professional Responsibility, Safety in Product Design, Intellectual Property)

### **Professional Interests**

Product and Machine Design and Safety, Control Systems; Engineering Computers and AI in Product Design and Education; Robotics; Biomechanics, Ergonomics and Human Factors in Product Design

### **Research Interests**

Transportation & Solid Waste Disposal: Studies of advanced ground transportation systems and solid waste disposal technology ( in 1960-1970's)  
Bio-Engineering: Orthopedic devices and implants. Biomechanics of musculo-skeletal system, skeletal impact absorption, osteoarthritis. Human factors and ergonomics in product design. Impact trauma biomechanics; impact attenuation effectiveness of protective helmets and sports equipment.  
Product and Machine Design & Design Education: Application of computers and AI to product design, safety in product design education; simulation of mobile robot environments; computer control of servo-systems

### **Consulting**

Product and machine design (consumer and industrial products and machinery, transportation systems and equipment, biomedical devices). Expert witness consulting in areas of product design, safety and human factors in product and industrial design, automated machinery, biomechanics of musculo-skeletal trauma and protective and sports equipment, patent litigation (product design)

### **Publications**

Over eighty publications in areas of Design, Eng'g. Education, Solid Waste Disposal, Transportation, Bio-Engineering and Orthopedics. Past Machine Design Ed. for Prod. Safety News and Ed. Board of JI. of Products Liability

## Exhibit 4

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 04-10233-RCL

JONATHAN BEIJAR  
Plaintiff

v.

STANLEY FASTENING SYSTEMS, L.P.  
Defendant

**PLAINTIFF, JONATHAN BEIJAR'S ANSWERS TO DEFENDANT'S  
INTERROGATORIES**

1. Please state your full name, present address, date of birth and social security number.
    - A. Name: Jonathan Beijar  
Address: 61 Laura Keene Ave.  
Acushnet, Massachusetts  
Date of Birth: 12/8/1977  
Social Security Number: 013-62-5082
  2. Please set forth in full detail the facts of the incident giving rise to this lawsuit, including but not limited to:
    - a. where the incident occurred;
    - b. how the incident occurred; and
    - c. when the incident occurred.
    - A.
      - a. Lot 14-5 Pirates Cove Road, Osterville, Massachusetts
      - b. A Stanley Bostitch pneumatic nailer fell from an overhead staging plank at my worksite as I was walking on the ground in the area below the staging. I attempted to avoid being struck by the nailer, but the barrel of the nailer struck my chest and spontaneously discharged, firing a three and a half inch roofing nail through my sternum, piercing my right ventricle, and lodging into my heart.
      - c. February 1, 2001, at approximately 12:20 P.M.
  3. Please identify by full name and address every person who has information about the incident, including but not limited to eyewitnesses, and briefly state for each the nature of their information.
-

all treatments, the nature of all treatments, and your understanding of the purpose of all treatments.

- A. I am not presently being treated for the injuries that I sustained as a result of the February 1, 2001 incident.
  - 21. For the period of February 1, 1996 through to the present, set forth whether you have suffered from any disease, injury, illness, or other condition and, if so, provide the name or a description of the disease, injury, illness or other condition; the date when each such disease, injury, illness or other condition began and ended; the name and address of each physician or other health care provider from whom you received treatment for each such disease, injury, illness, or other condition together with the dates of treatment rendered; the name and address of each hospital or other institution to which you were admitted or from which you received treatment together with the dates of admission.
    - A. To the best of my recollection, I did not suffer any significant injuries or illnesses during the stated time period.
  - 22. Please identify each person whom you expect to call as an expert witness at trial, state the subject matter on which each expert is expected to testify, state the substance of the facts and opinions to which each expert will testify, and summarize the grounds for each opinion.
    - A. Information regarding expert witnesses, if not privileged, will be furnished seasonably.
  - 23. Please state the basis for the contention in Paragraph 24 of your Complaint that "due notice" of "any and all breaches or warranty" was provided to Stanley, including in your answer:
    - a. The nature of the "due notice;"
    - b. By and to whom the "due notice" was provided; and
    - c. The date(s) on which "due notice" was provided.
  - A. On January 21, 2004, my attorney wrote to Stanley Fastening Systems, L.P.'s General Partner detailing the February 1, 2001 incident, describing the nailer, and identifying my resulting injuries.
  - 24. Please identify each occasion on which you used the product, or any similar product, including in your answer the purpose for which you used it and the length of time you used it.
    - A. I used pneumatic nailers on a few home remodeling projects. I do not recall the length of time that I used the nailers.
-

To the best of my recollection, I used a pneumatic nailer at the Care Free Homes, Inc. worksite at Lot 14-5 Pirates Cove Road, Osterville, Massachusetts on a couple of occasions. I do not recall the exact number of occasions on which I used a nailer at the Pirates Cove Road worksite, nor do I recall which nailer(s) I used or for how long I used the nailer(s). I did not use a nailer on February 1, 2001.

25. Were you using any safety equipment at the time the incident occurred? If so, please identify each type of safety equipment you were using and its/their present location.

A. No.

Signed under the penalties of perjury this 15<sup>TH</sup> day of October, 2004.

  
Jonathan Bejar

As to Objections:

JONATHAN BEIJAR  
By his attorney,

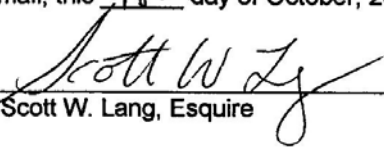
  
Scott W. Lang, Esquire BBO #285720  
Lang, Xifaras & Bullard  
115 Orchard Street  
New Bedford, MA 02740  
(508) 992-1270

Dated: October 18, 2004



**CERTIFICATE OF SERVICE**

I, Scott W. Lang, Esquire, hereby certify that I have served the within **PLAINTIFF, JONATHAN BEJAR'S ANSWERS TO DEFENDANT'S INTERROGATORIES** on the defendant by mailing a copy to its attorney of record: Christopher Duggan, Esquire, at Smith & Duggan, LLP, 2 Center Plaza, Boston, MA 02108, by first class mail, this 18<sup>th</sup> day of October, 2004.

  
\_\_\_\_\_  
Scott W. Lang, Esquire